IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 26701 of 1998

Between:

H.Shyamala, D/o. Late H. Gopal Rao,
R/o. 2-1-514/3/A, Nallakunta, Hyderabad.

..... PETITIONER

AND

Andhra Pradesh State Cooperative Bank Ltd., Rep. by its Managing

Director, H.O., Troop Bazar, Hyderabad 500 001.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order, direction or Writ particularly one in the nature of Writ of Mandamus or any other appropriate Writ declaring the action of the respondent-Bank in not fixing the pay of the petitioner duly taking into service rendered with effect from 4.7.88 in the post of Telephone Operator-cum-Receptionist is wholly illegal and arbitrary; and consequently direct the respondent to the petitioner to fix the pay of the petitioner in the appropriate scales of pay from the date of initial engagement in the respondent-Bank, i.e 4.7.88 with all consequential benefits and difference of arrears of pay.

Counsel for the Petitioner: MR. G.VIDYASAGAR

Counsel for the Respondent: MR. A.H.RAMA KRISHNA RAO (SC FOR APCOB)

The Court made the following:

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ORDER:

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This writ petition is filed seeking a Mandamus declaring the action of the respondent-Andhra Pradesh State Cooperative Bank Limited, Hyderabad, (for short,

'Bank') in not fixing the pay of the petitioner duly taking into account the service rendered by her with effect from
04-07-1988 in the post of Telephone Operator-cum-Receptionist as wholly arbitrary and illegal, and consequently direct the respondent-Bank to fix the pay of the petitioner at an appropriate stage.

It is the case of the petitioner that initially, she joined Nizamabad District Cooperative Central Bank Limited, Nizamabad as Telephone Operator with effect from 14-10-1982. While so, the General Manager of Nizamabad District Cooperative Central Bank, Nizamabad, asked for her willingness to go on deputation to the respondent-Bank. After obtaining her willingness, the General Manager, Nizamabad District Cooperative Central Bank, Nizamabad, vide orders dated 30-06-1988 communicated the decision of deputation of the petitioner to the Andhra Pradesh State Cooperative Bank Limited-respondent herein. The respondent-Bank, vide its proceedings dated 06-07-1988, posted the petitioner as Telephone Operator-cum-Receptionist on deputation basis for a period of one year or till a regular Telephone Operator is appointed. Thus, the petitioner was continued on deputation in the respondent-Bank since 06-07-1988 and her deputation was extended from time to time. Since she had put in more than three years of service on deputation, she made a representation for permanent absorption in the service of the respondent-Bank and to extend pay and other benefits as available to the employees of the respondent-Bank. In response to the representation of the petitioner, the respondent-Bank had issued proceedings dated 04-08-1995 absorbing the petitioner as Telephone Operator-cum-Receptionist in the regular service of the bank on the basic pay of Rs.900/- in the time scale of Rs.900-2860 with usual allowances. In the order, it was mentioned that her services shall be reckoned from the date of joining the Bank's service and that she will give an undertaking that she will not claim any service in respect of her previous employment in Nizamabad District Cooperative Central Bank Limited, Nizamabad. She gave an undertaking to that extent and did not claim the service rendered by her in Nizamabad District Cooperative Central Bank Limited, Nizamabad. Therefore, she was under the impression that her services from 04-07-1988 will be taken into account for the purpose of fixation of seniority and pay protection from the date she has been rendering service in the respondent-Bank. However, misconstruing the Memorandum dated 04-08-1995, the subsequent undertaking was obtained from her by the respondent-Bank alleging that she had

joined the service of the bank only on 04-08-1995 and the previous service from 04-07-1988 was not being taken into account, which is wholly unjustifiable. In fact, the Board of the respondent-Bank has passed a resolution on 22-06-1995 for the absorption of the petitioner into the respondent-Bank. Accordingly, the Memorandum dated 04-08-1995 was issued. Once this is so, it is established by the petitioner that she is entitled for the fixation of pay duly taking into account the length of service from 04-07-1998 rendered in the respondent-Bank for that purpose.

A detailed counter affidavit has been filed by the respondent-Bank denying the allegations made by the petitioner. It is further asserted that in fact, the petitioner gave an undertaking that she will not claim seniority in the cadre of Telephone Operator even from the date of joining the respondent-Bank till her services were absorbed in the bank. Therefore, the petitioner has waived her right for the purpose of fixing seniority and also fixing her pay in the scale applicable to the post.

I have given earnest consideration to the respective submissions made by the learned Counsel on either side and the material made available on record.

It is an admitted fact that through proceedings of the Board dated 22-06-1995, the services of the petitioner were sought to be absorbed in the respondent-Bank and accordingly, a communication memo dated
04-08-1995 was issued. It is interesting to note Condition No.2 of the said Memorandum dated 04-08-1995, which reads as under:

> "Her services shall be reckoned from the date of joining the bank's service in the post of Telephone Operator-cum-Receptionist and she shall be the junior most staff member in the Staff Assistant cadre. She shall have to give an undertaking that she shall not claim any service in respect of her previous employment with the Nizamabad DCC Bank, Nizamabad."

The said condition categorically indicates that the service of the petitioner shall be reckoned from the date of joining the bank's service in the post of Telephone Operator-cum-Receptionist and she shall be the junior most staff member in the Staff Assistant cadre. She shall have to give an undertaking that she shall not claim any service in respect of her previous employment with Nizamabad District Cooperative Central Bank Limited, Nizamabad. Once this is so clear, the question of the petitioner foregoing her service rendered in the respondent-Bank with effect from 04-07-1988 to 04-08-1995 (06-08-1995) does not arise. It is not the purport of the Memorandum dated 04-08-1995 that she is also not entitled to reckon the services

rendered in the respondent-Bank also apart from losing the service rendered in Nizamabad District Cooperative Central Bank Limited, Nizamabad. Further, it is to be noted, the learned Counsel for the respondent-Bank placed before this Court an undertaking purported to have been given by the petitioner on 22-09-1995 and also letter of the General Secretary of the APCOB Staff Union, Hyderabad, dated 11-07-1995. Immediately after passing the resolution by the Board dated 22-06-1995, the General Secretary of the APCOB Staff Union, Hyderabad, on 11-07-1995 made an objection to the resolution and opposed her absorption. It seems, under those circumstances, the Union also exerted pressure on the petitioner to give up her claim for the purpose of seniority even for the service rendered in the bank and thus the letter dated 22-09-1995 was executed by the petitioner. Even assuming such a letter has been executed by the petitioner, but this will not alter the nature of the resolution and the resultant Memorandum dated 04-08-1995, which has decided her rights once for all.

Be that as it may, very interesting arguments are being made that since the petitioner gave an undertaking on 22-09-1995, she is also not entitled for fixation of her salary in the cadre of Telephone Operator-cum-Receptionist in the respondent-Bank, by reckoning her service from the date of joining the respondent-Bank i.e. 06-07-1988. It is the rudiments of the service law that a person, who renders service, at the end of the year, gets one increment and in this case, admittedly, the petitioner is asking only to fix up her salary on the basis of the service rendered by her in the respondent-Bank in the capacity of Telephone Operator-cum-Receptionist. There is no reason why such a request ought not have been considered by the respondent-Bank. The petitioner, as a matter of right, is entitled to reckon the service rendered by her in the cadre of Telephone Operator-cum-Receptionist right from the date of her joining the bank on 06-07-1988 for the purpose of pay fixation and other benefits.

In the result, the writ petition is allowed and the respondent-Bank is directed to reckon the service of the petitioner from the date of her joining the Bank i.e. 06-07-1988 and fix her pay in the cadre of Telephone Operator-cum-Receptionist and pay the arrears, if any, that flow therefrom. No order as to costs.

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C.V.RAMULU, J

17th June, 2005.

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The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on Friday this the Seventeenth day of June, Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director, Andhra Pradesh State Cooperative Bank Ltd.,

Head Office, Troop Bazar, Hyderabad – 500 001.

2. Two CD copies.